

1 February 1994 I began work as an independent consultant in telecommunications,
2 serving state utility commissions and consumer counsels. I am currently serving
3 the Kansas Corporation Commission Advisory Staff on telecommunications
4 matters. Since beginning work as an independent consultant, I have performed a
5 variety of assignments and tasks related to formulation of telecommunications
6 policy and cost study review for many state utility commission projects. As a
7 result of these assignments, I have current expertise regarding competitive
8 markets issues in telecommunications, and the detailed tasks associated with
9 implementing the federal Telecommunications Act of 1996, pricing and costing,
10 interconnection, network unbundling, resale, number portability, etc. A complete
11 description of my background and experience is provided on Exhibit DB-1.

12 **Q. Do you have other relevant qualifications?**

13 A. Yes. In 1984 I was designated as a Chartered Financial Analyst by the Institute of
14 Chartered Financial Analysts ("ICFA"). The ICFA is the organization which has
15 defined and organized a body of knowledge important for all investment
16 professionals. The general areas of knowledge are ethical and professional
17 standards, accounting, statistics and analysis, economics, fixed income securities,
18 equity securities, and portfolio management.

19 **Q. What is the purpose of your testimony?**

20 A. The purpose of this testimony is to provide analysis under the FCC's Triennial
21 Review Order ("TRO"),¹ which requires a two-step evaluation of impairment in

¹ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation*

1 access to local circuit switching for mass market customers, in the event that an
2 Incumbent Local Exchange Company (ILEC) challenges the FCC's national
3 finding of impairment. The consequence of this evaluation is a determination of
4 whether unbundled local circuit switching (and by extension, the UNE-Platform
5 or UNE-P) must continue to be provided on a UNE basis² by incumbent local
6 exchange companies. This evaluation is to be conducted by state commissions on
7 a granular, market-specific basis since the FCC lacked such information to make
8 those determinations in the TRO. This analysis will be structured to follow
9 paragraph 8 of the First Amended Procedural Order in this case.³

10 In its Initial Status Report, filed December 19, 2003, Qwest indicated that it
11 believed it would challenge the FCC's finding that competition would be
12 impaired without access to unbundled local switching (UBLS) in the
13 Albuquerque Metropolitan Statistical Area (MSA), and that it was analyzing
14 information regarding a similar challenge in the Santa Fe, Las Cruces and
15 Farmington MSAs. Qwest's subsequent testimony filed February 16th claimed
16 that:

17 Qwest has presented evidence that satisfies the TRO requirements for
18 rebutting the national presumption of impairment in the Albuquerque and

of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Service Offering Advance Telecommunications Capability, CC Docket Nos. 01-338, 03-36; and 98-147 (August 21, 2003) ("Triennial Review Order" or "TRO").

² "UNE" is unbundled network element. The FCC makes its findings on the definition of "network element" at paragraphs 58-60 of the TRO. There, a network element is a facility or equipment capable of being used in the provision of a telecommunications service, and includes features, functions and capabilities that are provided by means of such a facility or equipment. If lack of access to a network element provided by the ILEC "impairs" the ability of CLECs to compete, then that network element is required to be "unbundled". TRO paragraphs 61-117.

³ *First Procedural Order, In the Matters of Implementation of a Batch Hot Cut Process, and Impairment in Access to Local Circuit Switching for Mass Market Customers*, Case Nos. 03-00403-UT and 3-00404-UT, (January 23, 2004).

1 Santa Fe MSAs. This evidence consists of the business case analysis
2 presented by Mr. Watson, the evidence of facilities-based CLEC
3 competition presented by Ms. Taylor, and Mr. Linse's testimony
4 demonstrating that switches are readily available to CLECs. The absence
5 of the need for an unbundling requirement in both MSAs is further shown
6 by Qwest's testimony establishing that CLECs do not face any significant
7 operational impairments in these MSAs. Accordingly, Qwest has shown
8 that the national finding of impairment for local switching does not apply
9 in the two MSAs for which it is seeking relief at this time.⁴

10
11 **Q. What is meant by "impaired" or "impairment"?**

12 **A.** Those terms have specific meaning and importance in this inquiry. Those
13 meanings have been derived from FCC proceedings, and court decisions. In the
14 TRO the FCC states that a "requesting carrier is impaired when a lack of access to
15 an incumbent LEC network element poses a barrier or barriers to entry, including
16 operational and economic barriers, that are likely to make entry into a market
17 uneconomic."⁵ When "impairment" exists, the FCC and state commissions can
18 require the ILEC to provide the network element to CLECs on an unbundled
19 basis. On the other hand, without impairment, there is no obligation on the part of
20 the ILEC to offer the particular network element on an unbundled basis.

21 **Q. What is the definition of "mass market" customers?**

22 **A.** The definition per the TRO (paragraph 127) is as follows:

23 Mass market consumers consist of residential customers and very small
24 business customers. Mass market customers typically purchase ordinary
25 switched voice service (Plain Old Telephone Service or POTS) and a few
26 vertical features. Some customers also purchase additional lines and/or
27 high speed data services. Although the cost of serving each customer is
28 low relative to the other customer classes, the low levels of revenue that
29 customers tend to generate create tight profit margins in serving them.
30 The tight profit margins, and the price sensitivity of these customers, force

⁴ Direct Testimony of Harry M. Shooshan III on behalf of Qwest, page 74, beginning at line 16.

⁵ TRO, paragraph 7.

- 1 A. The key factors are to determine whether such rolling access will allow CLECs to
2 aggregate customers and then migrate them in efficient batch hot cuts to their own
3 switching. Underlying this is the:
- 4 • Efficiency of the batch hot cut process;
 - 5 • The minimum number of customers that can be migrated at one time via the
6 batch hot cut process;
 - 7 • The time limitation on the availability of unbundled local circuit switching;
8 and,
 - 9 • The economic viability of the presumed deployment of local switches to
10 which these customers would be "hot cut".

11 **Conclusion/Summary**

12 **Q. Please summarize your testimony.**

13 A. I have reviewed the information available in this proceeding utilizing FCC
14 definition and discussion of key concepts such as impairment, mass market
15 consumers, market definition, and triggers. I recommend that the Commission
16 not utilize the Metropolitan Statistical Area (MSA) as the market definition since
17 it is too large and masks data and conclusions that should be drawn from review
18 of individual wire center data, to the detriment of competition and consumers. I
19 reviewed individual wire center data and concluded that the market areas should
20 be defined in Albuquerque and Santa Fe as multiple adjacent wire center areas
21 that share common UNE loop density zone characteristics and competitive
22 metrics.

1 I recommend that the Commission find that the information and trigger analysis
2 presented by Qwest is insufficient to overturn the national presumption of
3 impairment for mass market switching in those markets. Qwest did not establish
4 that the identified competitive switch providers are actively providing voice
5 service to mass market consumers; the data and analysis presented by Qwest do
6 appear fully or properly consider the information that was provided in discovery
7 and in response to bench requests; and the data and analysis do not separate the
8 enterprise and mass markets. Qwest did not harmonize, address or otherwise
9 explain the substantive differences between what its analysis indicated regarding
10 mass market CLEC switching, versus clear discovery responses to the contrary of
11 that analysis. The information presented by Qwest regarding providers of
12 intermodal services should not be given any weight by the Commission because it
13 did not address or provide additional information on the intermodal issues noted
14 by the FCC in the TRO.

15 In its further review of economic and operational barriers, I recommend that the
16 Commission view as critical matters the extent of actual availability of unbundled
17 loops, following the FCC's decision to eliminate unbundling requirements
18 associated with certain types of loops; the operational consequences associated
19 with a physical network change from UNE-P to UNE-L; the untested nature of the
20 Batch Hot Cut process; and, the growing importance of "bundling" of retail mass
21 market telecommunications service offerings. A finding of no impairment should
22 not be made unless there is assurance that subsequent to the TRO taking certain
23 loop types "off the table" as a UNE, there are in fact sufficient loops in proper

Direct Testimony of David Brevitz
Office of the New Mexico Attorney General
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1 working condition to take up former UNE-P provisioned customers, and that
2 service disruption associated with the physical change of network connections is
3 minimal enough that customers and competition are not unduly disrupted.

4 In addition I support the staff recommendation regarding testing of the Batch Hot
5 Cut Process before implementation or a finding of "no impairment". I note the
6 retail market environment within which the Commission considers this matter is
7 characterized by an emphasis on "bundled" services. Therefore, the Commission
8 should consider how *disruption of bundled packages* currently provided by a
9 CLEC using UNE-P can be avoided in any necessary transition to UNE-L.
10 Finally, I defer making a recommendation regarding the multi-line cut-off issue
11 pending a review of any responsive information that Qwest might file. I outline
12 the key factors for the Commission to consider in making its determination on
13 "rolling access".

14 **Q. Does this conclude your testimony?**

15 **A. Yes.**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF IMPAIRMENT)
IN ACCESS TO LOCAL CIRCUIT)
SWITCHING FOR MASS MARKET)
CUSTOMERS)**

Case No. 03-00404-UT

**IN THE MATTER OF IMPLEMENTATION)
OF A BATCH CUT PROCESS)**

Case No. 03-00403-UT

DIRECT TESTIMONY

OF

MICHAEL S. RIPPERGER

MARCH 3, 2004

DIRECT TESTIMONY OF
MICHAEL S. RIPPERGER
CASE NOS. 03-00403-UT and 03-00404-UT

1 A. Yes. I filed Rebuttal Testimony in this case on the batch hot cut process on
2 February 17, 2004. Also, please refer to Appendix A.

3

4 **I. INTRODUCTION**

5

6 **Q. WHAT IS THE PURPOSE OF STAFF'S TESTIMONY?**

7 A. The purpose of my Direct Testimony is to make recommendations to the
8 Commission on how to conduct its impairment analysis in this proceeding as
9 required by the Federal Communication Commission's (FCC's) Triennial Review
10 Order (TRO). In order to provide the Commission with an appropriate context
11 for its impairment inquiry, my testimony first addresses the status of competition
12 in New Mexico, New Mexico state policy of promoting competition in
13 telecommunications and how the provision of unbundled local circuit switching
14 relates to retail, local exchange service competition and investment in New
15 Mexico.

16 My testimony then makes recommendations on how the Commission should
17 consider 1) defining the cross over point between the mass market and the
18 enterprise market customers; 2) defining the market for purposes of its
19 impairment analysis; and 3) conducting the Market Triggers Analysis ("Step 1")
20 and the Post-Trigger Analysis ("Step 2") referred to in the Commission's First
21 Amended Procedural Order issued on January 23rd, 2004.

22

23 **Q. PLEASE SUMMARIZE STAFF'S RECOMMENDATIONS.**

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1 A. The Commission should conduct its impairment analysis in a manner that is
2 consistent with the it's policy and practice of promoting telecommunications
3 competition in New Mexico as required by federal and state law. The
4 Commission's impairment inquiry should begin with the recognition that virtually
5 no residential local exchange service competition existed in Qwest's New Mexico
6 service territory until UNE-P was introduced in New Mexico after Qwest's 271
7 approval to sell long distance in April 2002. Further, Staff recommends that the
8 Commission find impairment in all New Mexico markets unless Qwest clearly
9 demonstrate that the FCC's triggers have been met and that no exceptional barrier
10 to entry exists in any Commission defined market. Any conclusion to the
11 contrary would result in the elimination of New Mexico's nascent competitive
12 local exchange market.

13 Specifically, Staff recommends that the Commission should consider defining the
14 cross over point between mass market and enterprise market customers to be self-
15 validating. Staff also recommends that the Commission consider a market
16 definition for its impairment analysis that aggregates contiguous wire centers,
17 potentially by local calling areas; excludes or carves out all loops provisioned
18 over IDLC; and that either defines residential and business segments as two
19 separate markets or requires triggering carriers to provide local exchange service
20 over their own switches to both segments within any geographically defined
21 market. Staff also recommends that the Commission not consider Commercial
22 Mobile Radio Service ("CMRS"), cable telephony and Voice Over Internet

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1 Protocol ("VOIP") providers as "triggering" carriers in its two step triggers
2 analysis. Because the data that Staff has reviewed so far in this case is
3 incomplete¹ Staff does not make final recommendations to the Commission
4 regarding the Market Trigger Analysis (Step 1) and Post Trigger Analysis (Step 2)
5 and Staff anticipates that it may supplement its testimony regarding the two step
6 trigger analysis.

7
8 **Q. PLEASE DISCUSS THE FCC'S FINDINGS AND DIRECTION TO STATE**
9 **COMMISSIONS AS THEY RELATE TO THE FILING OF YOUR**
10 **DIRECT TESTIMONY IN THIS CASE.**

11 A. In the TRO, the FCC determined that competitors are impaired, on a national
12 basis, in their ability to offer service to mass market customers without access to
13 certain unbundled network elements (UNEs). Mass market customers are defined
14 by the FCC, in this context, as analog voice customers that purchase only a
15 limited number of POTs lines and can only be economically served via DSO
16 loops. The FCC directed state commissions to conduct nine-month proceedings to
17 address its national impairment findings on a state specific market-by-market
18 basis if challenged.

19 Qwest filed a Notice of Intent to challenge the FCC's impairment finding that
20 competitive carriers are impaired without access to local circuit switching for
21 mass market customers. By doing so, Qwest initiated this TRO proceeding. In

¹ For example, McLeod USA, Inc. has provided no data pursuant to the Commission's bench requests or

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1

2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

3 A. The availability of unbundled local circuit switching for mass market customers
4 at TELRIC based rates is integral to the continued development of
5 telecommunications competition in the state of New Mexico. Staff therefore
6 recommends that the Commission find impairment in all New Mexico markets
7 unless Qwest clearly demonstrate that the FCC's triggers have been met and that
8 no exceptional barrier to entry exists in any Commission defined market.

9 Staff also makes the following recommendations:

- 10 • the cross over point between mass market and enterprise market customers
11 should be self-validating;
- 12 • the market adopted by the Commission should aggregate contiguous wire
13 centers;
- 14 • the Commission should consider defining the market in terms of local calling
15 areas;
- 16 • the market adopted by the Commission should exclude all loops provisioned
17 over IDLC, or if the Commission includes IDLC provisioned lines in its
18 market definition, Staff recommends that the Commission find that portion of
19 the market is unavailable to competitors without UNE-P and that therefore the
20 triggers in the Commission's Market Trigger Analysis (Step 1) has not been
21 met;

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- 1 • the Commission should either define residential and business segments as
2 two separate markets in any geographic market designated by the Commission
3 or the Commission should require triggering carriers to provide local
4 exchange service over their own switches to both segments within any
5 geographically defined market; and
6 • CMRS, cable telephony and VOIP providers should be excluded from the
7 Commission's Market Trigger Analysis (Step 1) and Potential Deployment
8 Analysis (Step 2).

9 Finally, Staff may provide other information in supplemental testimony clarifying
10 its positions as more data becomes available.
11

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A. Yes.**
14